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COOK COUNTY STATE'S ATTORNEY'S  
OFFICE

Petition for an Investigation of Nicor's  
Budget Billing Program

Docket No.

01-0175

**THE COOK COUNTY STATE'S ATTORNEY'S OFFICE**  
**PETITION FOR AN INVESTIGATION OF NICOR'S BUDGET BILLING PROGRAM**

The Cook County State's Attorney's Office ("CCSAO"), by **RICHARD A. DEVINE**, State's Attorney of Cook County, respectfully request that the Illinois Commerce Commission ("Commission") conduct a hearing to investigate Nicor's proposed Budget Billing program pursuant to Sections 4-101, 8-101, 8-102 and 9-201 of the Public Utilities Act ("PUA"). 220 ILCS 5/4-101, 5/8-101, 5/8-102, 5/9-201. CCSAO requests that the Commission allow Nicor's Budget Billing program to go into effect but hold a hearing to investigate the propriety of its proposed budget payment plan. 220 ILCS 9-201. In support of said request, CCSAO states as follows:

1. Nicor submitted its proposed Budget Billing program on January 31, 2001, as a way to assist customers in managing their utility payments. However, for the following reasons, CCSAO objects to Nicor's budget program and requests this Commission to conduct a hearing and investigation.
2. In paragraph 5.1<sup>1</sup>, the company refers to "residential and commercial sales customers *in*

<sup>1</sup> References to the bullets in Nicor paragraph 5 of its Petition are, for convenient reference, numbered as subparagraphs to Nicor paragraph 5. Hence, reference to paragraph 5.1 is a

*good credit standing*" (emphasis added). Moreover, the draft tariff that is attached to the Nicor proposal excludes customers that have been disconnected for nonpayment, as well as customers that are now on deferred payment arrangements, from participation in the Company's proposed Budget Billing program.

3. CCSAO objects to these exclusions. The second exclusion, in particular, lacks a sound policy basis. Under this rule, if a customer has arrears and has done nothing, that customer can enter the Company's Budget Billing program. If, however, a customer has arrears and has contacted the company to negotiate a deferred payment arrangement, *that* customer is excluded from Budget Billing. The fact that customers with arrears are not *per se* excluded from the Budget Billing program is evident from the fact that the Company's application proposes a deferred payment arrangement as part of the budget billing process.

4. CCSAO's concern about the exclusion for accounts that have been subject to disconnection is two-fold. First, the "good credit standing" standard could be used to exclude low-income customers from participation in the proposed Budget Billing program. While it is incorrect to assume that low-income status and payment-troubled status go hand-in-hand, it is generally recognized that low-income customers have *greater* difficulties in paying their home energy bills than do their higher income counterparts. Census data, for example, supports this conclusion. One 1995 census data report,<sup>121</sup> which is based on 1992 data, found that while 9.8% of non-poor families could not pay their utility bills in full, 32.4% of poor families could not do so. According to the Census Bureau, while 1.8% of non-poor families had their electricity or natural gas disconnected for nonpayment, 8.5% of poor families suffered this same deprivation. This disconnection ratio increased even further for welfare recipients, to 10.5%.<sup>131</sup>

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reference to bullet 1, paragraph 5 of the Nicor application.

<sup>121</sup> U.S. Census Bureau, *Extended Measures of Well-Being: 1992*, P70-50RV (November 1995).

<sup>131</sup> At the time of the Census study, welfare was known as Aid to Families with Dependent Children (AFDC). The program has since been renamed and is now known as Temporary Aid to Needy Families (TANF).

5. Such a result would not address a large part of the affordability concerns that CCSAO raised in its emergency petition, ICC Docket No. 00-0789. Low-income customers are the customers who might benefit most from the budget billing.

6. Second, the very purpose of the CCSAO's emergency petition was to respond to the payment difficulties caused by the dramatically higher natural gas prices identified in that petition. If those payment difficulties are used, up-front, to exclude customers from the budget bill process, then that process doesn't address the very issue it is intended to address. At the least, this exclusion is limited to those customers who would benefit the least from it.

7. CCSAO approves of the distinction set forth in Nicor Paragraphs 5.2 and 5.3. The distinction between allowing a customer to enroll at any time of the year, but soliciting enrollment during the period February through May is a good distinction. Customers should be *allowed* to enter the Budget Billing program at any time of the year. Nonetheless, Nicor appropriately observes that the program works best if customers enter during the low-cost months, thus allowing customers to build up credits in those low-cost months to be applied in the high cost winter heating months. To allow enrollment at any time, but to actively *solicit* enrollment during the times when the program operates most effectively and efficiently is a reasonable approach.

8. CCSAO has concern about the proposed solicitation language in Nicor Paragraph 5.3. The language that "the company would solicit customers to participate" does not provide sufficient information to convince CCSAO that the solicitation would be adequate or appropriate. In promoting a program such as the proposed Budget Billing Program, it is the *type* and nature of solicitation that is important. Bill inserts, for example, have historically been found to be an ineffective mode of communication to large segments of a utility's customer population. In lieu of the proposal contained in Nicor Paragraph 5.3, CCSAO requests that the Company be required to submit an education and solicitation plan. All parties should be provided an opportunity to respond to that proposal to seek to ensure that the solicitation process is reasonably designed to be effective in informing all customers who may benefit of the Budget Billing program not only of the existence of the program, but of the

mechanisms available to enroll.

9. CCSAO *strongly* urges that the company involve community-based organizations in its outreach and enrollment process. It is through these organizations that, CCSAO have found historically, consumer education gets out to the public. Any solicitation plan for the proposed Budget Billing program should include line-item expenditures directed toward incorporating community-based organizations into the process.

10. Our recommendation to have Nicor involve community-based organizations to the maximum extent practicable recognizes that the group of community action agencies, state LIHEAP staff, and other similar service agencies that are in the front line of contact with customers who cannot afford to pay these high bills. Each of those community-based organizations should have readily available a Budget Billing enrollment form acceptable in form to Nicor. The staff of such agencies should be not only permitted, but encouraged, to counsel persons who come in for additional assistance that one of the *first* actions for the customer to take in response to high natural gas bills is to enroll in the Budget Billing program. Moreover, Nicor should ensure that the staff of such agencies can implement such enrollment immediately and on-site with no further steps needed by the customer.

11. While not within the province of the Commission to direct, CCSAO further encourages the Commission and the Company to request that the Illinois LIHEAP agency include with all future LIHEAP applications a consent form<sup>141</sup> that would allow the receipt of LIHEAP to be deemed a consent to move the LIHEAP recipient to budget billing. When the Company receives the LIHEAP payment, they can post the LIHEAP payment to the customer account and, at the same time, enroll the customer in the Budget Billing program.

12. Although CCSAO believes that the budget payment amount calculation set forth in Nicor Paragraph 5.5 is reasonable, the Company needs to calculate the budget amount for LIHEAP

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<sup>141</sup> We assume that all LIHEAP application forms for the current winter heating season are already printed. A separate consent form would thus be required. However, for the 2001/2002 winter heating season, we would encourage the Commission and the Company to request the Illinois LIHEAP office to include a simple consent box on the LIHEAP application form, such that individuals may consent to enrollment in Budget billing as part of the LIHEAP application process.

recipients in particular by taking the total bill as calculated according to Paragraph 5.5, and subtracting the LIHEAP payment from that total bill, before levelizing the budget bill amount. An illustration may be helpful. Assume that Nicor calculates a \$1,200 annual bill for a LIHEAP recipient that receives a \$300 LIHEAP payment. The Company would apply the \$300 LIHEAP payment to the annual bill (making it \$900) and levelize the resulting \$900 bill into 12 equal monthly installments.

13. This process avoids the LIHEAP payment becoming one of the customer's monthly payments (in lieu of customer funds being used in the month in which LIHEAP is received). A LIHEAP payment should be used to reduce *each* levelized monthly bill to a more affordable amount. In the above example, a failure to treat LIHEAP in this fashion would result in the \$300 LIHEAP payment being applied to a customer account. That LIHEAP payment would represent three of the \$100 levelized monthly payments. The customer would thus be excused from paying during these three months out of the customer's resources. The practical effect is that the customer is looking at high monthly bills again in the months after the LIHEAP credit is exhausted. These higher bills will be faced without the prospect of additional public assistance being available. The integration of LIHEAP with the Budget Billing program should result in a LIHEAP recipient making smaller payments *every month* as a result of the levelized monthly Budget Billing program.

14. CCSAO also proposes modifications to Paragraph 5.6. CCSAO agrees that, "from time-to-time during the year," Nicor will want to "re-evaluate" the Budget Plan amount. These adjustments should only be made if they will substantively affect the ultimate ability of the customer to pay any deficiency at the end of the year. Accordingly, the proposal to make adjustments only if over the adjustment exceeds \$6 is accepted.

15. Adjustments should, however, *not* be based on past estimated bills. Many large urban utilities routinely estimate bills for their inner-city customers. These estimated bills are frequently erroneously (and significantly erroneously) high. Changes in a levelized Budget Bill amount should not be based on over-estimated bills. Adjustments to budget billing amounts should be limited to based on actual meter readings.

16. In addition, CCSAO urges the Commission to place clear limits on when and on how many times adjustments can be made. One advantage of the budget bill is not simply to spread payments of the higher bill over a longer period of time, but to set a *known* bill amount that customers can budget for. If Nicor begins to change the budget billing amount four or five or six times a year, the customers lose the advantage of the "budget" part of the levelized monthly budget billing payment. In general, CCSAO recommends that the statement contained in paragraph 5.6 be limited to allowing adjustments to twice a year (at months 4 and 8 of the Budget Billing plan).

17. CCSAO objects to Nicor Paragraph 5.10. The rule that "if the customer misses two (2) budget installments during the budget time period" is too strict. You want one of two alternative rules. At a minimum, you want "if the customer misses two *consecutive* budget installments..." An even better rule is that "if the customer accrues a past due balance equal to two budget installments..."

18. A budget payment plan only levelizes a bill. It does not address the underlying affordability of the bill. Low-income customers, in particular, may make late or partial payments. Despite these late or partial payments, few of these customers will fall substantially behind. Despite this prospect, Nicor's "missing two payments in a 12 month period" rule introduces not only the possibility, but the probability, that many low-income folks will be removed from the Budget Billing program even if they somehow struggle to basically keep up.

19. Even a rule providing that "missing two *consecutive* budget installments" would result in the removal of a customer from the Budget Billing program has problems. The problems have to do with the way in which customer payments are applied to utility bills. Payments are applied to the oldest bill first. Assume, therefore, that in Month 1, a customer receives a \$100 bill and makes a \$0 payment. This customer has missed that payment. Assume, further, that in Month 2, this same customer receives a \$100 bill, and makes a \$100 payment. What the customer has done is to make the Month 1 payment, but, in so doing, he or she has "missed" his or her second consecutive payment. As a result, even under a "miss two consecutive payment program rule," this customer would be subject to removal from the Budget Billing program.

20. Removal from the Budget Billing program should occur only upon evidence of a pattern of missed payments indicating that the customer is going to fall continually further behind on the dollars owed. CCSAO thus recommends a program regulation that addresses the issue of partial and late payments, as opposed to payments that are completely "missed." The purpose of a levelized Budget Billing program is to let customers spread their payments out. If these customers begin to miss sufficient payments to fall two bills behind, then the purpose of the levelized Budget Billing plan is being frustrated. In this case, but only in this case, should the customer be subject to removal. Under this approach, using the assumption of a \$100 levelized monthly Budget Bill for illustration, the removal point would be when the customer falls into arrears of at least \$200.

21. CCSAO objects to Nicor Paragraph 5.12. Instead of this approach, the CCSAO recommends that year-end balances be rolled over into the next year's budget payment.

22. At a minimum, however, only year-end balances *over* \$77 should be billed immediately to the customer. To do otherwise would impose substantial disparate treatment that has no justification. To illustrate, assume that Nicor has two difference customers. Customer A has a balance of \$76, which gets rolled over into next year's budget payment plan. Customer B has a balance of \$78, which he or she must pay in it entirety immediately. At a minimum, Customer B should have the first \$77 rolled over into the next year with only the excess to be paid immediately.

23. In addition, credit balances should not be treated differently from account balances. A symmetry of treatment between account balances and credit balances should be created. If a customer has the obligation to pay year-end account balances, those customers should have at least the option of receiving cash payment of any credit balance that may arise.

24. CCSAO recommends that a limit be placed on the extent to which an arrears payment can increase a customer's Budget Bill. An appropriate limitation is that arrears will be spread over the twelve month Budget Plan period, provided that the total payment (budget bill plus arrears) does not exceed 150% of the Budget Plan payment. Under this approach, if the Budget Plan payment is \$100 a

month, the period over which the arrears can be paid will need to be extended until the arrears payment is no more than \$50 (50% of the Budget Plan payment). And, there would always be a minimum twelve month repayment period.

25. In adopting this limitation, the Commission should be cognizant of the fact that a customer who has an arrears sufficiently large such that his or her monthly repayment amount would be equal to more than half of the budget bill is someone who is a considerable number of months behind. CCSAO urges that it makes no sense to enter into a Budget Plan to make bills more affordable and then to completely emasculate the purpose of that plan by adding an arrears payment that would increase the bill to unaffordable levels.

26. This proposal does *not* involve, in any way, shape or fashion, arrears forgiveness. The proposal merely reflects that an arrears that is so substantial that its repayment over 12 months would require a payment equal to more than 50% of the total current monthly bill is a result of a company's lack of collection as much as a result of a customer's lack of payment. Under such circumstances, the Company should provide sufficient flexibility in the terms of a deferred payment agreement to reduce the arrears payment to a maximum of half the budget billing amount.

27. CCSAO finally reiterates its proposal that any Budget Billing program should allow a customer to spread budget payments for current bills over more than 12 months. As indicated in CCSAO's emergency rulemaking, ICC Docket No. 00-0789, current price projections anticipate a moderating of gas prices by the middle of 2002. CCSAO recognizes that some limitation may be appropriate on this proposal. A limitation holding that only bill amounts in excess of 110% of last year's weather normalized bill can be subject to payment delays until months 13 - 24 is not unreasonable.

28. Finally, the Cook County attorney recommends that Nicor suspend its credit reporting of delinquent accounts during time of the hearing and investigation of Nicor's budget program. CCSAO has been informed that Nicor reports to the credit bureau all customers who have an account with an arrears of at least 58 days old. Nicor reports on a monthly basis. Providing credit reports on

delinquent utility accounts to the credit bureau serves no utility purpose. The only impact that such reports might generate is to deny credit, or to increase the cost of credit, to customers who have difficulty in responding to the extraordinary gas cost situation now facing Illinois. To knowingly penalize customers due to these extraordinary circumstances appears to be punitive at best. Moreover, customers who are able to manage the increased gas costs do not receive *favorable* credit reports. The only impact that can arise to consumers is an *adverse* credit report. Utility credit reporting of unpaid bills should be suspended until the Commission's hearing and investigation is over.

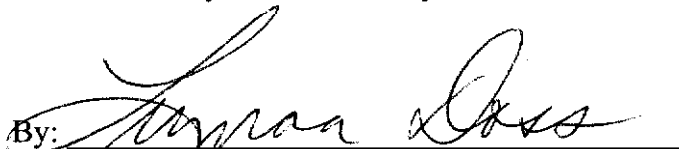
## CONCLUSION

WHEREFORE, for all the reasons articulated above, the Cook County State's Attorney's Office respectfully requests this Commission to allow Nicor's proposed Budget Billing program to go into effect but initiate a hearing and investigation. Upon conclusion of the hearing, CCSAO respectfully requests that the Commission order Nicor to modify its budget plan to be consistent with the Commission's findings. In addition, CCSAO requests that this Commission suspend Nicor's credit reporting of delinquent accounts until the Commission has completed its investigation and hearing.

Respectfully submitted,

**RICHARD A. DEVINE**  
State's Attorney of Cook County

Date: February 15, 2001

By:   
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Assistant State's Attorney  
Environment and Energy Division

**MARIE SPICUZZA**  
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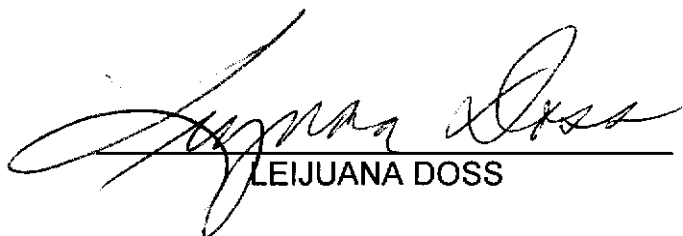
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STATE OF ILLINOIS                    )  
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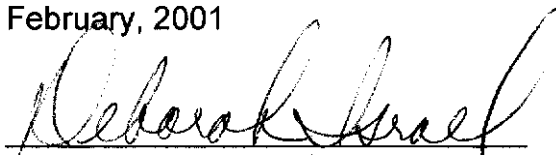
**VERIFICATION**

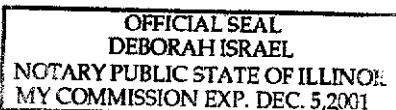
**NOW COMES LEIJUANA DOSS**, who, after first being sworn,  
deposes and says:

1.     That she is an Assistant State's Attorney in Cook County  
assigned to represent the Cook County State's Attorney's Office in connection  
with this Petition for an Investigation of Nicor's Budget Billing Program.
  
2.     That the facts alleged therein are true and correct to the best  
of her knowledge and belief.

  
LEIJUANA DOSS

SUBSCRIBED and SWORN to  
Before me this 15<sup>th</sup> day of  
February, 2001

  
Notary Public



**COOK COUNTY STATE'S ATTORNEY'S  
OFFICE**

**Docket No.**

TO: Attached Service List.

**RICHARD A. DEVINE**  
State's Attorney of Cook County

By

## CERTIFICATE OF SERVICE

Leijuana Doss  
Assistant State's Attorney

**SERVICE LIST**  
**ICC DOCKET NO.**

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